

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>ST. LOUIS PIPELINE CORPORATION</b>	)	
	)	
	)	
Petition Pursuant to Sections 8-503, 8-509, 15-101	)	Docket No. 02-0664
and 15-401 of the Public Utilities Act for a	)	
Certificate authorizing operation as a common	)	
carrier by pipeline, and for entry of an Order	)	
authorizing and directing construction and	)	
operation of a petroleum pipeline and granting	)	
authority to exercise eminent domain.	)	

**BRIEF OF ST. LOUIS PIPELINE CORPORATION**

NOW COMES St. Louis Pipeline Corporation (hereinafter **APetitioner@**) by its attorneys  
McNamara & Evans, and hereby files its Brief in the above entitled cause.

**STATEMENT OF FACTS**

Petitioner filed a Petition herein pursuant to the terms of Sections 18-503, 18-509, 15-101 and 15-401 of the Public Utilities Act (hereinafter **AAct@**). Petitioner seeks authority from the Illinois Commerce Commission (hereinafter **ACommission@**) to operate as a common carrier by pipeline, a pipeline extending from Hartford-Wood River, Illinois to the Illinois/Missouri border at or near the Chain of Rocks-Mississippi River Bridge (all of said pipeline being located in Madison County, Illinois). Petitioner further requests that the Commission enter an order authorizing and directing Petitioner to construct, install, and maintain an approximately eight-mile segment of the pipeline between Hartford-Wood River, Illinois and the Illinois/Missouri border at or near the Chain of Rocks-Mississippi River Bridge. Petitioner further seeks authority pursuant to the terms of Section 18-509 of the Act exercise the power of eminent domain to

acquire permanent easements under and through the real estate traversed by the Pipeline. Pursuant to Section 200.150(h) of the Illinois Commerce Commission Rules of Practice, Petitioner sent due notice to all landowners along and upon the pipeline in question by a Supplement to Petition filed November 6, 2002. Pursuant to the instruction of Administrative Judge John Albers, a Certificate of Publication was published in the official state newspaper on October 21, 2004. Metro East Sanitary District (hereinafter ~~A~~MESD~~@~~) filed a Petitioner to intervene. MESD's petition was granted on January 7, 2003. MESD actively participated throughout the proceedings. Wood River Drainage and Levee District and the City of Madison filed entries of appearance but did not actively participate in these proceedings. Staff of the Illinois Commerce Commission (hereinafter referred to as ~~A~~Staff~~@~~) appeared and participated. Petitioner, MESD, and Staff engaged in discovery and presented oral and documentary evidence.

This matter came on for hearing with the Illinois Commerce Commission at Springfield, Illinois, on February 23, 2005, before John Albers, Administrative Law Judge. Edward D. McNamara, Jr. appeared on behalf of Petitioner. Linda M. Buell appeared on behalf of the Staff of the Illinois Commerce Commission. Robert Rongey appeared on behalf of MESD.

Certain preliminary matters were addressed prior to the presentation of testimony. The testimony of Mr. Robert Rose, President of the Petitioner, had previously been filed as Petitioner's Exhibit 2.0. An affidavit in support of Mr. Rose's testimony was filed as Petitioner's Exhibit 2.1. MESD and Staff waived cross examination of Mr. Rose and the testimony of Mr. Rose was entered into evidence without objection.

Direct testimony of Mac G. Warfield, Executive Director of MESD (MESD Exhibit 2) was likewise entered into evidence by agreement of all the parties to this proceeding.

The first witness to testify was Mr. Phil Hardas, a Senior Finance Analyst with the Finance

Department of the Commission. Mr. Hardas identified Staff Exhibit 2 which was three written pages entitled Direct Testimony of Phil A. Hardas. Mr. Hardas was tendered for cross-examination. Neither Petitioner nor MESD cross-examined Mr. Hardas. Mr. Hardas, in his testimony, concluded that Petitioner does not need financial resources to complete and operate the proposed project because the Pipeline already exists. He further concluded that Petitioner is in negotiations with MESD over right-of-way costs and that said costs are not large enough to cause a concern. The only remaining financial concern would be Petitioner's ability to handle financial liability as a result of an accident or leak or loss of structural integrity of Petitioner's pipeline as result of a catastrophic event. Mr. Hardas concluded that Petitioner has insurance to cover liabilities that it might incur as a result of an accident or other catastrophic event. Mr. Hardas recommended that the Commission determine that Petitioner is financially fit to operate as a common carrier by Pipeline.

Mr. Donald Hopgood appeared and testified on behalf of the Petitioner herein. He is the General Manager of the Petitioner. Mr. Hopgood identified his prepared direct testimony which had previously been filed in this docket as Petitioner's Exhibit 1.0 through 1.6 inclusive. He stated that he had reviewed the testimony and that, if he were asked the same questions, his testimony would be the same. Mr. Hopgood also identified Petitioner's Exhibits 3.0 through Exhibits 3.6 inclusive, being his supplemental testimony filed in this docket. Once again, he testified that, if asked the same questions, his answers would be the same. Mr. Hopgood also identified his Rebuttal Testimony as Petitioner's Exhibits 4.0 through 4.2. Mr. Hopgood once again stated that if asked the same questions, his answers would be the same. Mr. Hopgood further identified his Surrebuttal Testimony as Petitioner's Exhibit 6.0 and stated that, if asked the same questions, he would give the same answers.

Mr. Hopgood was cross-examined by Linda Buell, an attorney representing the Staff. Ms. Buell referred Mr. Hopgood to Page 2 of his Surrebuttal Testimony, Petitioner's Exhibit 6. Mr. Hopgood testified in the Surrebuttal that the easement to be granted to Petitioner by MESD would be non-exclusive. He was asked by Ms. Buell to explain what a non-exclusive easement is. Mr. Hopgood stated: "the owner of the ground has - - - maintains the right to also allow other utilities within the same five foot wide easement, it is my understanding, if it is non-exclusive." (Tr. 156).

Mr. Hopgood explained that St. Louis Pipeline would always prefer an exclusive easement because it takes away the concern of other utilities being granted the right to use the same land (Tr. 159). These concerns are safety concerns (Tr. 159-160). He was an active participant in obtaining easements and maintaining easements, but that Robert Rose had the final say as to payment for any type of easement (Tr. 160). The portion of the pipeline that crosses MESD's property is exclusively six inches. MESD has proposed a non-exclusive five foot wide easement (Tr. 163). The proposed easement offered by MESD is non-exclusive, it makes no difference from a safety standpoint whether or not it is a one foot wide easement or a five foot wide easement. If it were an exclusive easement, a five foot wide instead of one foot wide easement would make such a difference (Tr. 164-165). Mr. Hopgood also explained that whether Petitioner had a one foot easement or a five foot easement, Petitioner would be able to perform the same type of maintenance (Tr. 167-168).

On cross-examination by the attorney for MESD, Mr. Hopgood agreed that there were five or six other pipelines in the same area that Petitioner's pipeline crosses the property of MESD. Mr. Hopgood further testified that the Office of Pipeline Safety requires a minimum of twelve to eighteen inches between pipelines (Tr. 168). An exclusive easement would provide protection for Petitioner (Tr. 179). The

construction of the pipeline as it now exists commenced in the middle of 1998. The prior ordinance or agreement between Petitioner and MESD expired in 1995 (Tr. 175). Petitioner has not paid anything to MESD since the ordinance or agreement between Petitioner and MESD expired in 1995 (Tr. 178-179). Mr. Hopgood explained that it was his understanding that MESD has the rights to the ground which is the subject matter of this proceeding by virtue of an easement (Tr. 184-185). All of the pipeline located on MESD property was replaced in 1998 (Tr. 188-189). The pipeline was moved at the request of the Illinois DOT due to the construction of new twin bridges and safety concerns of IDOT (Tr. 190). Very little corrosion occurs on the pipeline because pipelines are installed with cathodic protection against corrosion (Tr. 195-196). Mr. Hopgood explained that, in his opinion, the public need of the grant of the petition herein is to provide product to the airport in the safest possible manner in quantities necessary to support aircraft coming into and out of Lambert. The airline customers are American and Southwest (Tr. 208). Mr. Hopgood stated that as of the day of the hearing, his company was supplying about 60,000 gallons of fuel to Lambert per day (Tr. 210). Mr. Hopgood stated that his pipeline and Shell Pipeline are the only pipelines that supply Lambert with Jet A fuel (Tr. 213). The pipeline which is the subject matter of this proceeding does not serve any customers beyond Lambert Airport. The long range forecast of Lambert is to resume pre-2001 levels of product requirement by year 2008 (Tr. 219). The U.S. Corps of Engineers required a five foot width crown over the pipeline as it crosses the top of the levee. The Corps of Engineers required Petitioner to place the pipeline on top of the levee and not dig into the levee (Tr. 225-226).

Judge Albers asked Mr. Hopgood a number of questions on cross-examination. Mr. Hopgood specified the location of the pipeline by referring to Petitioner's Exhibit 3.1. He further explained that Petitioner moved the pipeline out of safety concerns. The easement Petitioner is seeking from MESD is 627

feet from the center line of the canal south to the point at which MESD's property stops (Tr. 237). Pursuant to an October 1, 1998 letter from MESD, Petitioner thought it had the right to install the pipeline as it now exists (Tr. 239-240). Petitioner has no other one foot wide easements for its pipeline as it now exists in the eight mile stretch within Illinois (Tr. 241). Petitioner was requesting a one foot easement due to the exorbitant costs of easements that MESD was levying (Tr. 241-242). Mr. Hopgood stated that, unless someone dug a backhoe into the pipeline or some other unforeseen accident occurred, or the usual life of the pipeline simply came due, there would not in his opinion be any need to disrupt earth to work on the pipeline (Tr. 243-244). The pipeline referred to as the Shell Pipeline is now actually owned by Buckeye Company. The refinery of Conoco Phillips sends its product via the Buckeye Pipeline to Lambert Airport. Petitioner is in negotiations with Conoco Phillips for Conoco Phillips to send its product through Petitioner's pipeline to the airport (Tr. 244-245). Mr. Hopgood believes that a one foot wide easement would satisfy any safety concerns (Tr. 246).

On redirect examination, Mr. Hopgood testified that, as far as performing any type of maintenance on the pipeline, having a five foot wide easement versus a one foot easement would still require permission from MESD. Petitioner cannot excavate and expose the pipeline in the five foot wide easement. Petitioner would be better off with a one foot exclusive easement versus a five foot non-exclusive easement (Tr. 247-248). Mr. Hopgood stated that in his opinion the life expectancy of a pipeline is between fifty and seventy-five years, in this case from November or December of 1998 (Tr. 250-251). There have been occasions where Petitioner's pipeline has been the sole supplying pipeline to St. Louis Municipal Airport. This occurs due to maintenance problems in the Buckeye Pipeline (Tr. 251-253). The general shipping public, as well as the general traveling public, utilize the two airlines that Petitioner is currently supplying (Tr. 254-255).

Petitioner's Exhibits 1, 3, 4 and 6 were admitted into evidence (Tr. 263). Petitioner's certificate of publication (Petitioner's Exhibit 7) was admitted into evidence (Tr. 264-265).

Mr. Dennis Kallash was called as a witness on behalf of Petitioner. Mr. Kallash is a registered professional licensed surveyor in the State of Missouri and owns Fitch and Associates. Petitioner's Exhibits 5.0 and 5.1 comprise the direct testimony of Mr. Kallash and an attachment thereto. Mr. Kallash has read over his direct testimony and, if asked the same questions, would give the same answers (Tr. 267). Mr. Kallash explained that Petitioner asked his company to provide a legal description for the pipeline as is now exists. He stated that his legal description was as exact as can be given without digging up the pipeline and visually seeing it (Tr. 271). Petitioner's Exhibits 5.0 and 5.1 were admitted into evidence (Tr. 284). In Exhibit 5.0, Mr. Kallash explains that the legal description of the pipeline set forth in the Petition filed herein accurately reflects to a reasonable degree of engineering certainty the actual location of the pipeline as it now exists.

Mr. Walter Greathouse was called as a witness on behalf of MESD. Mr. Greathouse identified MESD Exhibits 1.0 through 1.15 as the direct testimony of Walter Greathouse and attachments thereto. Mr. Greathouse stated that he did not need to make any changes to his testimony as set forth in Petitioner's Exhibit 1 (Tr. 286). Mr. Greathouse has been with MESD for 22 years and is now employed as a supervisor. On cross-examination Mr. Greathouse explained that before 1996 MESD had not required an easement width. It appears that the five feet easement width started sometime in the 1970's (Tr. 290). Mr. Greathouse explained that if MESD granted a five foot easement to Petitioner, MESD would grant a larger temporary easement if St. Louis Pipeline ever needed to perform repair or maintenance work (Tr. 291). Mr. Greathouse further stated that, if Petitioner were granted a one foot wide easement, MESD would grant

a larger temporary easement if the Petitioner needed to perform repair or maintenance (Tr. 292). To the best of Mr. Greathouse's knowledge, MESD has never granted an exclusive easement (Tr. 293). Mr. Greathouse stated that MESD tries to keep pipelines separated by five feet for obvious reasons, mostly related to safety (Tr. 294). Mr. Greathouse stated that, even if a one foot easement were granted to Petitioner, MESD would still have the opportunity to exclude any additional parties within five feet (Tr. 296). Mr. Greathouse agreed that Petitioner's pipeline would fit within a one foot easement and agreed that with the one foot easement, upon proper notice, Petitioner would be able to perform its maintenance (Tr. 300). The five foot wide easement requirement of MESD was established through usage and custom at MESD rather than an edict from the Corps of Engineers or the Federal Department of Transportation (Tr. 303). In March of 1998, MESD was seeking a charge of 50 cents per square foot for a five foot wide easement (Tr. 311). In April of 2002, its charges for 25-year easements were \$1.00 per square foot, five foot width for the first five years; \$1.50 per square foot for the next five years; \$2.00 per square foot for the next five years; \$2.50 per square foot for the next five years; \$3.00 per square foot for the next five years (Tr. 313-314). MESD has never actually been able to get a pipeline to sign an agreement at this rate structure (Tr. 314). Mr. Greathouse agreed that, for the 25-year period, Petitioner would pay \$156,750.00 for a five foot wide non-exclusive easement (Tr. 320). Mr. Greathouse sees no direct correlation between what MESD must do as a result of Petitioner having a pipeline on its real estate and its proposed charges (Tr. 320-321). In questioning by Judge Albers, Mr. Greathouse stated that he is not aware of any express policy of MESD demanding that the five foot easement be used.

Mark Maple testified on behalf of the Staff of the Illinois Commerce Commission. Mr. Maple is an energy engineer in the engineering department of the Energy Division of the Commission. He identified Staff



Exhibit 1.0 as his direct testimony and Staff Exhibit 3.0 as his rebuttal testimony. He had no corrections to make to his testimony. Mr. Maple, in his direct testimony, recommended the Commission grant Petitioner's request. Mr. Maple indicated on Page 5 of his prepared testimony (ICC Staff Exhibit 1.00) that the application has been properly filed. Mr. Maple, at Page 6 of his testimony, indicated that Petitioner has demonstrated a public need for the pipeline. Mr. Maple explained that the Petitioner is fit, willing and able to provide the service (Page 8, ICC Exhibit 1.00). Mr. Maple stated that public convenience and necessity requires the issuance of the certificate herein (ICC Staff Exhibit 1.00 page 8). Mr. Maple agreed with Mr. Hopgood's assessment that having fuel shipped by pipeline as opposed to shipment by truck benefits the public (Page 10, ICC Staff Exhibit 1.00). Mr. Maple concluded that Petitioner should be granted a certificate of good standing because Petitioner has satisfied each of the four requirements specified in the Act (ICC Staff Exhibit 1.00, Page 10).

Mr. Maple also testified as to the Commission's requirements of eminent domain, specifically referring to Sections 8-503 and 8-509 (Page 11, ICC Staff Exhibit 1.00). Mr. Maple believes that Petitioner has indeed made a good faith effort to negotiate easements with MESD (Page 11, ICC Staff Exhibit 1.00). In his rebuttal testimony Mark Maple reiterated his support for Petitioner's request but stated that Petitioner should be required to obtain an easement that is, at a minimum, five feet wide. (ICC Staff Exhibit 3.00, p.1)

### **STATEMENT OF LAW**

Section 15-401 of the Act provides in relevant part as follows:

' 5/15-401. Licensing.

(a) No person shall operate as a common carrier by pipeline unless the person

possesses a certificate in good standing authorizing it to operate as a common carrier by pipeline. No person shall begin or continue construction of a pipeline or other facility, other than the repair or replacement of an existing pipeline or facility, for use in operations as a common carrier by pipeline unless the person possesses a certificate in good standing.

(b) Requirements for issuance. The Commission, after a hearing, shall grant an application for a certificate authorizing operations as a common carrier by pipeline, in whole or in part, to the extent that it finds that the application was properly filed; a public need for the service exists; the applicant is fit, willing, and able to provide the service in compliance with this Act, Commission regulations, and orders; and the public convenience and necessity requires issuance of the certificate.

Section 8-503 of the Act provides in relevant part as follows:

' 5/8-503. Additions, improvements and new structures;  
joint construction or other actions.

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the

time specified in said order;...

Section 8-509 of the Act provides in relevant part as follows:

' 5/8-509. Eminent Domain

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-503 or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.

**ARGUMENT**

Petitioner herein seeks authority extending from Hartford-Wood River, Illinois to the Illinois/Missouri border at or near the Chain of Rocks-Mississippi River Bridge. This is more fully described in the Petition filed herein on October 8, 2002. No serious argument has been made by Intervener, MESD, that a common carrier certificate by pipeline should not be granted. Section 15-401(b) sets forth the requirements for issuance of a certificate of public convenience and necessity. Mark Maple, in his testimony, discusses the four requirements set forth in Section 15-401(b) of the Act and concludes that a certificate should be granted (ICC Staff Exhibit 1, Pages 5-10). The application was properly filed. Petitioner demonstrated a public need. The pipeline is needed by the public to supply Jet-A fuel to Lambert International Airport. Petitioner is fit, willing and able. Petitioner has substantial assets and has substantial experience in the operation of petroleum pipeline. Finally, the public convenience and necessity requires the issuance of the certificate. If Petitioner is unable to transport the Jet-A fuel through its pipeline, the public would be inconvenienced by shortage of the product, leading to travel and shipment delay, as well as higher operating costs. There exists only one other pipeline that supplies Jet-A fuel to Lambert International

Airport. There are occasions when this pipeline is out of service. The alternative to pipeline transportation is truck transportation. Mr. Hopgood has testified as to the advantage and increase in general safety to the public from the use of pipelines as opposed to putting additional trucks on the highways.

MESD filed a Reply herein on October 31, 2005. Petitioner calls attention to paragraph 24 of the Reply where MESD stated as follows:

That in the event the Illinois Commerce Commission granted the Metro East Sanitary District's Request for a Declaratory Ruling, or in the alternatively, its motion to dismiss, the Metro East Sanitary District will withdraw its opposition to that portion of St. Louis Pipeline Corporation's Petition herein seeking a certificate authorizing operation as a common carrier by pipeline and for entry of an order authorizing and directing construction and operation of a petroleum pipeline, and would not oppose the eminent domain issue, with the understanding that the order would not have any effect on property that is owned by or held and devoted to a public use by the Metro East Sanitary District.

Section 8-503 of the Act requires Commission approval of construction, installation and repair of the facility of any public utility. In this case, St. Louis Pipeline has already constructed the pipeline. However, if a certificate of public convenience and necessity is granted by this Commission, continued maintenance or repairs of this pipeline would require Commission approval. No argument has been made that Petitioner should not be allowed to continue to operate its pipeline. This is a case about money.

As is set forth on page three of the Interim Order herein, Petitioner and MESD have been unable to agree upon the amount that Petitioner should pay MESD for the use of the easement. It is not a case where MESD is arguing that the condemnation of the property in question will interfere with a public use. MESD in this case has argued to require that Petitioner take, and more importantly, pay for more of MESD's property than Petitioner finds necessary. Throughout the discovery and trial of this matter, no issue was raised as to private versus public use of the property. No argument was made by MESD that the use of the

property by Petitioner would interfere with MESD's duty to the public. The pipeline is placed on top of the levee maintained by MESD. Petitioner would submit that the property in question is at this time devoted to a private use, Petitioner's transportation of Jet-A fuel to St. Louis International Airport. Petitioner would request the right to condemn the property if the property is found to be "private property". In other words, a proper order herein would allow the use of eminent domain to acquire private property, whether or not it is owned by MESD. This Commission has the jurisdiction to issue such an Order. Such an Order would not go beyond the statutory authority granted to this Commission pursuant to Section 8-509 of the Act. Eminent Domain. Such a decision would be consistent with the Supreme Court finding in *City of Chicago v. Sanitary District*, 272 Ill. 37 at 41, 111 N.E. 491 (1916). Such a decision would not preclude the parties from litigating the issue of "private property" at any eminent domain proceedings in the Circuit Court. *Egyptian Electric Cooperative Association v. Illinois Commerce Commission*, 33 Ill.2d. 339; *Illinois Power Company v. Lynn*, 50 Ill. App. 3d 77, 365 N.E. 2d 264 (4<sup>th</sup> Dist. 1977).

In its argument that the property in question is public property, MESD relies upon the definitions set forth in the Local Government Tort Immunity Act and more specifically set forth in Section 3-101, to wit:

' 5/3-101. Definitions.

As used in this Article unless the context otherwise requires "property of a local public entity" and "public property" mean real or personal property owned or leased by a local public entity, but do not include easements, encroachments and other property that are located on its property but that it does not own, possess or lease.

Petitioner would submit that even utilizing MESD's definition of public property the property in question is

not public property. It is property that Petitioner possesses. It is not property that MESD is utilizing as part of its levee system.

A proper order herein would order and direct Petitioner by the exercise of eminent domain authority to acquire the necessary right-of-way easement in, over, along, upon, under, across and through the real property as is more fully described in Exhibit A attached hereto. Such an order would allow Petitioner to maintain its pipeline as it now exists. Such an order would not cause an interference with the use of the property by MESD. Any issue as to ownership of the real property in question would be subject to litigation in the Circuit Court. Any question as to compliance with Section 8-509 of the Act would be subject to litigation in the Circuit Court.

Respectfully submitted,

ST. LOUIS PIPELINE CORPORATION

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the Brief Of St. Louis Pipeline Corporation together with the Proposed Order and Certificate Of Public Convenience And Necessity was served upon the

following parties of record by facsimile, electronic mail, or by enclosing the same in an envelope plainly addressed to said parties, affixing first-class postage thereto, and depositing in the United States Mail at Springfield, Illinois on the 28th day of February, 2006.

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